

ARKANSAS COURT OF APPEALS

EN BANC
No. CA08-1213

ROBERT CLEARY

APPELLANT

V.

SLEDGE PROPERTIES, INC.

APPELLEE

Opinion Delivered April 29, 2009

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT,
[NO. CV-2007-101-4]

HONORABLE DON GLOVER,
JUDGE

APPEAL DISMISSED

PER CURIAM

Appellant Robert Cleary appeals from a grant of summary judgment in favor of appellee Sledge Properties, Inc., on Cleary's complaint for declaratory judgment. We cannot reach the merits and must dismiss this appeal for lack of a final order because Sledge's counterclaim remains unresolved.

In November 1989, Cleary entered into a contract with Gardner Investments, Inc., for the purchase of certain real property located in Drew County. According to the contract, Cleary was to pay the balance of the purchase price in monthly installments of \$277.53, over a ten-year period. The contract, which was not recorded, also provided that Cleary would pay all taxes on the property. In December 1993, Cleary unilaterally reduced the monthly payments to \$175 per month. Cleary ceased making payments altogether in April 1998. The property was subsequently conveyed by Gardner Investments to Sledge in 2007. Cleary has

remained in possession of the property since 1989.

On May 21, 2007, Cleary filed a complaint seeking a declaration that he owned the property by adverse possession. Sledge denied the material allegations of the complaint and asserted that Cleary had failed to pay the full purchase price for the property. Sledge also filed a counterclaim in unlawful detainer, seeking possession of the property, judgment for the unpaid rent, and its attorney's fees and costs.

Sledge subsequently filed a motion for summary judgment on Cleary's complaint, asserting that Cleary could not prevail on his claim because Gardner Investments, not Cleary, had paid the property taxes on the property, thereby negating one of the elements of adverse possession. The motion also asserted that Cleary lacked color of title, another element of adverse possession. In response, Cleary asserted that he and Gardner Investments renegotiated the agreement and adjusted the sales price down. He also submitted an affidavit from his daughter averring that Gardner Investments had paid the real estate taxes because the assessor would not accept payments from Cleary without the property being in Cleary's name.

After a hearing, the circuit court granted Sledge's motion for summary judgment. This appeal followed.

Arkansas Rule of Appellate Procedure--Civil 2(a) permits an appeal from a final order and other categories constituting exceptions not applicable here. The order must be final for this court to have jurisdiction, and thus it is a matter we will consider even though the parties do not raise it. *Haile v. Arkansas Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995).

Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all of

the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Dodge v. Lee*, 350 Ark. 480, 88 S.W.3d 843 (2002). Although Rule 54(b) provides a method by which the circuit court may direct entry of final judgment as to fewer than all of the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final and we must dismiss the appeal. *Id.* The fundamental policy behind Rule 54(b) is to avoid piecemeal appeals. *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002).

The order of summary judgment being appealed from in the present case did not contain a Rule 54(b) certification directing that a final judgment be entered as to only the appellant's complaint. The order failed to adjudicate Sledge's counterclaim, and parties desiring to appeal from an interlocutory order must comply with Rule 54(b). *See French v. Brooks Sports Ctr., Inc.*, 57 Ark. App. 30, 940 S.W.2d 507 (1997). The appeal presented has complied with neither Ark. R. App. P.--Civ. 2(a) nor Ark. R. Civ. P. 54(b), and therefore we lack jurisdiction and the appeal must be dismissed.

Dismissed.